IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.5515 OF 2004

1. Mr Sanjay Shinde & Anr, .. Petitioners

Vs

Padmakar Dhondopant Panase, .. Respondent

Mr S.V.Sadavarte, for the petitioners.

CORAM : D.B.BHOSALE,J.

DATE : 13th September, 2004.

PC:

1. Heard Mr Cadavers, learned counsel for the petitioners.

2. This petition challenges the order dated 16.4.2004 passed by the Jt. Civil Judge, Senior Division, Kolhapur below Exhibit 15/D in Spl. Civil Suit No.145 of 2003. The order dated 16.4.2004 reads thus:

> "Suit summons duly served to Deft.Nos 1 and 2 on 21.7.2003 vide Exhibit-5. However, they failed to file W.S. within 90 days. As per the principles laid down in cited case law published in 2004(1) Mh.L.J. page 532, prescribed outer limit of 90 days for filing written statement cannot be extended further with the aid of section 148 of C.P.Code. Therefore, present

application is rejected."

3. The judgment on which the learned Judge has relied upon does not apply to the facts of the present case. This Court in **Shailaja A.Sawant (Dr) Vs. Sayajirao Ganpatrao Patil, 2004 (2) Mh.L.J 419** considered the question as to whether after the 2002 amendment to Order 8 Rule 1 of the Civil procedure Code upon expiry of a period of 90 days from the service of the writ of summons upon the defendant, the defendant is wholly and absolutely barred from filing his written statement. In that case, this Court has taken a view that the provisions of Order 8 Rule 1 are directory in nature and, therefore in a given case it has discretion to allow the defendant to file written statement after 90 days. The said Judgment also records a note of caution in paragraph 31 thereof. One of the learned Single Judges of this Court had taken a different view in **Prabhakar Vs. Bhagwan Mitharam, 2004 (2) Mh.l.J.1058** and in view thereof, a question was referred to a Division Bench of this Court. The Division Bench, while considering the said question in **Chintaman Sukhdeo Kaklij and ors Vs. Shivaji Bhausaheb Gadhe and ors, Writ Petition No.2847 of 2004, vide its judgment and order dated 12/13th August, 2004** upheld the view of the learned Single Judge in Shailaja A.Sawant case. The

Judgment of this Court relied upon by the learned Judge in the impugned order dated 16.4.2004 had been considered in Shailaja A.Sawant case and also by the Division bench in Chintaman Sukhadeo Kaklij case. Considering this and keeping in view that the judgment in Shailaja A. Sawant case has been upheld by the Division Bench of this Court, in my opinion, the appropriate course would be to direct the learned Judge to consider the application filed by the petitioner-Exhibit-15/D in Spl.Civil Suit No.145 of 2003 afresh in the light of the observations made in Shailaja A Sawant's case. Order accordingly. Consequently, the impugned order renders ineffective. The writ petition is disposed of.

(D.B.BHOSALE, J.)